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11 FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-
12 THROUGH CERTIFICATES, SERIES 2007-10

13 UNITED STATES BANKRUPTCY COURT

14 NORTHERN DISTRICT OF CALIFORNIA - SANTA ROSA DIVISION

15 In re

16 ANGELO P ACCORNERO AND LORI E
17 ACCORNERO,

18 Debtor(s).

Case No.10-13676-AJ

Chapter 7

R.S. No. GO-14

MOTION FOR RELIEF FROM
AUTOMATIC STAY
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

DATE: November 24, 2010
TIME: 9:00 am

99 South "E" Street
Santa Rosa, CA 95404-6524

19 HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities
20 Corporation, Mortgage Pass-Through Certificates, Series 2007-10¹ ("Movant"), moves this court
21 for an order terminating the automatic stay of 11 U.S.C. § 362 as to Movant, so that Movant
22 may commence and continue all acts necessary to enforce its security interest in real property
23 generally described as 5960 Yerba Buena Road, Santa Rosa, California, 95409.

24 On or about September 23, 2010, Angelo P Accornero and Lori E Accornero ("Debtors")
25 filed a voluntary petition under Chapter 7 of the Bankruptcy Code, and Linda S. Green was
26 /././

27
28 ¹ This Motion for Relief from Automatic Stay shall not constitute a waiver of the within party's right to receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

1 appointed as Chapter 7 Trustee. As a result of said filing, certain acts and proceedings against
2 Debtors and the bankruptcy estate are stayed as provided in 11 U.S.C. § 362.

3 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and
4 362(d)(2).

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I.**

7
8 **MOVANT IS ENTITLED TO RELIEF FROM THE**
9 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).**
10 **NO EQUITY**

11 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the
12 debtor does not have any equity in the property and the property is not necessary to the debtor's
13 effective reorganization.

14 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:
15 § 362(d)(2) reflects congressional intent to allow creditors to
16 immediately proceed against the property where the debtor has no
17 equity and it is unnecessary to the reorganization, even where the
18 debtor can provide adequate protection under § 362(d)(1).
(Emphasis added).
19 Id. at 610 (emphasis added).

20 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court
21 stated that in determining whether equity exists in the property for purposes of § 362(d)(2), all
22 encumbrances are totaled, whether or not all the lienholders have joined in the request for relief
23 from stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194
(9th Cir. 1984).

24 An appropriate cost of sale factor should also be added to determine if the debtor has
25 any equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R.
26 283, 289 (Bankr. S.D. Cal. 1982).

27 On or about March 16, 2007, Debtors, for valuable consideration, made, executed and
28 delivered to Provident Funding Associates, L.P. ("Lender") a Note in the principal sum of
\$630,000.00 (the "Note"). Pursuant to the Note, Debtors are obligated to make monthly

1 principal and interest payments commencing May 1, 2007, and continuing until April 1, 2037,
2 when all outstanding amounts are due and payable. The Note provides that, in the event of
3 default, the holder of the Note has the option of declaring all unpaid sums immediately due and
4 payable. A copy of the Note is attached to the Declaration in Support of Motion for Relief
5 From Automatic Stay as exhibit A and incorporated herein by reference.

6 On or about March 16, 2007, the Debtors made, executed and delivered to Lender a
7 Deed of Trust (the "Deed of Trust") granting Lender a security interest in real property
8 commonly described as 5960 Yerba Buena Road, Santa Rosa, California, 95409 (the "Real
9 Property"), which is more fully described in the Deed of Trust. The Deed of Trust provides that
10 attorneys' fees and costs incurred as a result of the Debtors' bankruptcy case may be included in
11 the outstanding balance under the Note. The Deed of Trust was recorded on March 27, 2007, in
12 the Official Records of Sonoma County, State of California. A copy of the Deed of Trust is
13 attached to the Declaration in Support of Motion for Relief From Automatic Stay as exhibit B
14 and incorporated herein by reference.

15 Subsequently, all beneficial interest in the Deed of Trust was assigned and
16 transferred to Movant. A copy of the Corporation Assignment of Deed of Trust evidencing the
17 Assignment of the Deed of Trust to Movant is attached to the Declaration in Support of Motion
18 for Relief From Automatic Stay as exhibit C and incorporated herein by reference.

19 The obligation under the Note is in default as of September 1, 2010, for failure to make
20 payments to Movant. As of October 6, 2010, the total obligation due and owing under the Note
21 is in the approximate amount of \$634,458.52, representing the principal balance in the amount
22 of \$629,330.49, interest in the sum of \$7,094.33, late charges in the amount of \$163.89, and
23 less an escrow balance in the amount of \$<2,130.19>. This is an approximate amount for
24 purposes of this Motion only, and should not be relied upon as such to pay off the subject loan
25 as interest and additional advances may come due subsequent to the filing of the Motion. An
26 exact payoff amount can be obtained by contacting Movant's counsel. Further, Movant has
27 incurred additional post-petition attorneys' fees and costs in bringing the instant Motion.
28 Moreover, the total arrears under the Note are in the approximate sum of \$8,889.19, excluding

1 the post-petition attorneys' fees and costs incurred in filing the instant Motion. A copy of the
2 contractual payment accounting pursuant to Local Rule 4001-1(g)(1) is attached to the
3 Declaration in Support of Motion for Relief From Automatic Stay as exhibit D and incorporated
4 herein by reference.

5 **II.**

6 **RELIEF FROM STAY**

7 **LACK OF EQUITY**

8 Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and
9 Statements, the fair market value of the Property is approximately \$501,000.00. True and
10 correct copies of the Debtors' bankruptcy Schedules "A" and "D" are collectively attached to
11 the Declaration in Support of Motion for Relief From Automatic Stay as exhibit E and
12 incorporated herein by reference.

13 Based on the above, Movant maintains that the equity in the Property is as follows:

14	Fair Market Value:	\$501,000.00
15	Less:	
15	Movant's Trust Deed	\$634,458.52
16	Costs of Sale (8%)	\$40,080.00
16	Equity in the Property:	\$<173,538.52>

17 As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since
18 this is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is
19 entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

20 **III.**

21 **MOVANT IS ENTITLED TO RELIEF FROM THE**

22 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).**

23 **CAUSE - LACK OF ADEQUATE PROTECTION**

24 Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to
25 adequate protection of its interest in the Property.

26 Movant submits that adequate protection in this case requires normal and periodic cash
27 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed
28 to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

1 Movant is informed and believes that Debtors are presently unwilling or unable to
2 provide adequate protection to the Movant and there is no probability that adequate protection
3 can be afforded to Movant within a reasonable time.

4 By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C.
5 § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

6 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

7 1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the
8 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of
9 Trust;

10 2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

11 3. Granting Movant leave to foreclose on the Real Property and to enforce the
12 security interest under the Note and the Deed of Trust, including any action necessary to obtain
13 possession of the Property;

14 4. Permitting Movant to offer and provide Debtors with information re: a potential
15 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan
16 Workout/Loss Mitigation Agreement, and to enter into such agreement with Debtors;

17 5. Alternatively, in the event this court declines to grant Movant the relief requested
18 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
19 reinstate and maintain in a current condition all obligations due under the Note and Deed of
20 Trust and all other deeds of trust encumbering the Real Property, including Debtors' obligations
21 to pay when due (a) the monthly installments of principal and interest, as required under the
22 Note; (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors
23 in order to protect Movant's interest in the Real Property, including all attorneys' fees and costs
24 incurred in the filing of this motion;

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1 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion
2 be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy
3 law; and

4 7. For such other and further relief as the court deems just and proper.

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6 Dated: October 28, 2010

PITE DUNCAN LLP

7
8 /s/ GABRIEL OZEL (CA SBN 269098)
9 Attorneys for HSBC BANK USA,
10 NATIONAL ASSOCIATION AS
11 TRUSTEE FOR WELLS FARGO
12 ASSET SECURITIES
13 CORPORATION, MORTGAGE PASS-
14 THROUGH CERTIFICATES, SERIES
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